

CHAPTER 427

GOVERNMENT - LOCAL

HOUSE BILL 19-1279

BY REPRESENTATIVE(S) Exum and Landgraf, Arndt, Bird, Buckner, Buentello, Catlin, Cutter, Duran, Esgar, Froelich, Galindo, Gonzales-Gutierrez, Gray, Hansen, Herod, Jackson, Kennedy, Kipp, Kraft-Tharp, Liston, McCluskie, Melton, Michaelson Jenet, Roberts, Singer, Sirota, Snyder, Tipper, Titone, Valdez A., Valdez D., Weissman, Becker, Benavidez, Caraveo, Carver, Coleman, Hooton, Lontine, McLachlan, Pelton, Sandridge, Sullivan, Will, Wilson;
also SENATOR(S) Lee and Hisey, Bridges, Crowder, Fenberg, Fields, Gardner, Ginal, Gonzales, Moreno, Pettersen, Rankin, Story, Tate, Todd, Winter.

AN ACT

CONCERNING THE USE OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The historic use of perfluoroalkyl and polyfluoroalkyl substances, known as PFAS chemicals, in Class B firefighting foams has contaminated the drinking water of nearly 100,000 Coloradans, including five water systems down-gradient from Peterson Air Force Base, and volunteer firefighting station wells at the Sugarloaf Fire District in Boulder county. The full extent of contamination in Colorado has not yet been determined.

(b) PFAS chemicals do not break down in the environment and are toxic to people and wildlife at very low levels. Ingesting even small amounts can cause cancer and other serious health problems. Exposure to PFAS chemicals is linked to kidney and testicular cancer, thyroid problems, pregnancy complications, high cholesterol, and immune system disorders. Firefighters and first responders are exposed to these chemicals at work and nearly every American has measurable amounts in their bodies.

(c) Removing PFAS chemicals from drinking and groundwater supplies is expensive and treatment must continue for decades. The Widefield Aquifer in

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

Fountain, Colorado, is permanently contaminated with PFAS chemicals.

(d) PFAS chemicals are not necessary to put out high temperature fires. Major airports like London Heathrow have successfully used fluorine-free Class B firefighting foams for years, including to combat active fires. Washington state will ban the sale of Class B firefighting foams with intentionally added PFAS chemicals for residential fires in 2020.

(e) In addition to handling PFAS chemicals in emergencies and in training, PFAS chemicals are used on firefighter personal protective equipment. Both turnout gear and station ware have tested positive for PFAS chemicals. Scientists and health experts have determined the hazard this poses for first responders.

(2) Therefore, it is the intent of the general assembly to limit the use of PFAS chemicals by prohibiting the sale of Class B firefighting foams with intentionally added PFAS chemicals, in certain circumstances, by August 2, 2021; prohibiting training with these foams; and by requiring manufacturers to disclose whether the personal protective equipment they sell contains PFAS chemicals.

SECTION 2. In Colorado Revised Statutes, **add** 24-33.5-1234 as follows:

24-33.5-1234. Training restrictions with certain firefighting foams - penalty - definitions. (1) BEGINNING AUGUST 2, 2019, A PERSON OR FIRE DEPARTMENT MAY NOT DISCHARGE OR OTHERWISE USE FOR TRAINING PURPOSES OR FOR TESTING FIREFIGHTING FOAM FIRE SYSTEMS CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES. AS USED IN THIS SUBSECTION (1), "FIREFIGHTING FOAM FIRE SYSTEMS" MEANS A SYSTEM DESIGNED TO PROVIDE PROTECTION FROM FIRE, OR FOR THE SUPPRESSION OF FIRE, THROUGH THE USE OF FIREFIGHTING FOAM.

(2) A PERSON OR FIRE DEPARTMENT WHO ADMINISTERS A TRAINING PROGRAM WHICH VIOLATES SUBSECTION (1) OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION IN THE CASE OF A FIRST OFFENSE. A PERSON OR FIRE DEPARTMENT WHO ADMINISTERS A TRAINING PROGRAM WHICH VIOLATES SUBSECTION (1) OF THIS SECTION REPEATEDLY IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH REPEAT OFFENSE. PENALTIES COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND CREATED IN SECTION 24-33.5-1231.

(3) FOR PURPOSES OF THIS SECTION, "CLASS B FIREFIGHTING FOAM", "FIRE DEPARTMENT", AND "PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES" HAVE THE SAME MEANING AS THEY ARE DEFINED IN SECTION 25-5-1302.

SECTION 3. In Colorado Revised Statutes, **add** part 13 to article 5 of title 25 as follows:

PART 13
FIREFIGHTING FOAMS AND
PERSONAL PROTECTIVE EQUIPMENT

25-5-1301. Short title. THE SHORT TITLE OF THIS PART 13 IS THE "FIREFIGHTING FOAMS AND PERSONAL PROTECTIVE EQUIPMENT CONTROL ACT".

25-5-1302. Definitions. AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CHEMICAL PLANT" MEANS A LARGE INTEGRATED PLANT OR THAT PORTION OF SUCH A PLANT, OTHER THAN EITHER A PLANT IN WHICH FLAMMABLE LIQUIDS ARE PRODUCED ON A COMMERCIAL SCALE FROM CRUDE PETROLEUM, NATURAL GASOLINE, OR OTHER HYDROCARBON SOURCES OR A PLANT OR THAT PORTION OF A PLANT WHERE FLAMMABLE LIQUIDS PRODUCED BY FERMENTATION ARE CONCENTRATED AND WHERE THE CONCENTRATED PRODUCTS MAY ALSO BE MIXED, STORED, OR PACKAGED, WHERE FLAMMABLE LIQUIDS ARE PRODUCED BY CHEMICAL REACTIONS OR USED IN CHEMICAL REACTIONS.

(2) "CLASS B FIREFIGHTING FOAM" MEANS FOAM DESIGNED FOR FLAMMABLE LIQUID FIRES.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(4) "FIRE DEPARTMENT" MEANS THE DULY AUTHORIZED FIRE PROTECTION ORGANIZATION OF A TOWN, CITY, COUNTY, OR CITY AND COUNTY, A FIRE PROTECTION DISTRICT, A METROPOLITAN DISTRICT OR COUNTY IMPROVEMENT DISTRICT THAT PROVIDES FIRE PROTECTION, OR A VOLUNTEER FIRE DEPARTMENT ORGANIZED UNDER SECTION 24-33.5-1208.5.

(5) "FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT" MEANS ANY CLOTHING, INCLUDING JACKETS, PANTS, SHOES, GLOVES, HELMETS, AND RESPIRATORY EQUIPMENT, DESIGNED, INTENDED, OR MARKETED TO BE WORN BY FIREFIGHTING PERSONNEL IN THE PERFORMANCE OF THEIR DUTIES.

(6) "MANUFACTURER" MEANS A PERSON OR ENTITY THAT MANUFACTURES FIREFIGHTING AGENTS OR FIREFIGHTING EQUIPMENT AND ANY AGENTS OF THAT PERSON OR ENTITY, INCLUDING AN IMPORTER, A DISTRIBUTOR, AN AUTHORIZED SERVICER, A FACTORY BRANCH, AND A DISTRIBUTOR BRANCH.

(7) "PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES" OR "PFAS CHEMICALS" MEANS A CLASS OF FLUORINATED ORGANIC CHEMICALS CONTAINING AT LEAST ONE FULLY FLUORINATED CARBON ATOM.

25-5-1303. Restriction on sale of certain firefighting foams - exemptions.

(1) BEGINNING AUGUST 2, 2021, A MANUFACTURER OF CLASS B FIREFIGHTING FOAM MAY NOT KNOWINGLY SELL, OFFER FOR SALE, DISTRIBUTE FOR SALE, OR DISTRIBUTE FOR USE IN THE STATE CLASS B FIREFIGHTING FOAM TO WHICH PFAS CHEMICALS HAVE BEEN ADDED.

(2) THE RESTRICTIONS IN SUBSECTION (1) OF THIS SECTION DO NOT APPLY TO THE MANUFACTURE, SALE, OR DISTRIBUTION OF CLASS B FIREFIGHTING FOAM:

(a) WHERE THE INCLUSION OF PFAS CHEMICALS IS REQUIRED BY OR AUTHORIZED

BY FEDERAL LAW INCLUDING BUT NOT LIMITED TO 14 C.F.R. PART 139, OR IMPLEMENTED IN ACCORDANCE WITH FEDERAL AVIATION ADMINISTRATION GUIDANCE, OR OTHERWISE REQUIRED FOR A MILITARY PURPOSE;

(b) FOR USE AT A GASOLINE, SPECIAL FUEL, OR JET FUEL STORAGE AND DISTRIBUTION FACILITY THAT IS SUPPLIED BY A PIPELINE, VESSEL, OR REFINERY; A TANK FARM FROM WHICH GASOLINE, SPECIAL FUEL, OR JET FUEL MAY BE REMOVED FOR DISTRIBUTION; OR A REFINERY;

(c) FOR USE AT A CHEMICAL PLANT; AND

(d) FOR USE AT THE EISENHOWER-JOHNSON TUNNELS, IF DEEMED NECESSARY BY THE DEPARTMENT OF TRANSPORTATION. IF THE DEPARTMENT OF TRANSPORTATION DEEMS THE USE OF SUCH CLASS B FIREFIGHTING FOAM NECESSARY, THE DEPARTMENT OF TRANSPORTATION MUST ALSO MAKE A PLAN TO CONTAIN AND SAFELY DISPOSE OF SUCH CLASS B FIREFIGHTING FOAM AND ANY WATER USED IN THE CLEANUP OF SUCH CLASS B FIREFIGHTING FOAM.

25-5-1304. Notification requirement. A MANUFACTURER OF CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS MUST NOTIFY, IN WRITING, PERSONS THAT SELL THE MANUFACTURER'S PRODUCTS IN THE STATE ABOUT THE PROVISIONS OF THIS PART 13 NO LESS THAN ONE YEAR PRIOR TO THE EFFECTIVE DATE OF SECTION 25-5-1303.

25-5-1305. Notice of chemicals in personal protective equipment. (1) BEGINNING AUGUST 2, 2019, A MANUFACTURER OR OTHER PERSON THAT SELLS FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT MUST PROVIDE WRITTEN NOTICE TO THE PURCHASER AT THE TIME OF SALE IF THE FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS. THE WRITTEN NOTICE MUST INCLUDE A STATEMENT THAT THE FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT BEING SOLD CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS AND THE REASON PFAS CHEMICALS ARE ADDED TO THE EQUIPMENT.

(2) THE MANUFACTURER OR OTHER PERSON SELLING FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT AND THE PURCHASER OF THE EQUIPMENT MUST RETAIN THE NOTICE DESCRIBED IN SUBSECTION (1) OF THIS SECTION ON FILE FOR AT LEAST THREE YEARS FROM THE DATE OF SALE.

(3) UPON THE REQUEST OF THE DEPARTMENT, A PERSON, MANUFACTURER, OR PURCHASER MUST FURNISH THE NOTICE, OR WRITTEN COPIES, AND ASSOCIATED SALES DOCUMENTATION TO THE DEPARTMENT WITHIN SIXTY DAYS AFTER THE REQUEST.

25-5-1306. Certificate of compliance. THE DEPARTMENT MAY REQUEST A CERTIFICATE OF COMPLIANCE FROM A MANUFACTURER OF CLASS B FIREFIGHTING FOAM OR FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT. A CERTIFICATE OF COMPLIANCE MUST ATTEST THAT A MANUFACTURER'S PRODUCTS MEET THE REQUIREMENTS OF THIS PART 13.

25-5-1307. Civil penalty. A MANUFACTURER OR A PERSON WHO VIOLATES THE PROVISIONS OF THIS PART 13 IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE

THOUSAND DOLLARS FOR EACH VIOLATION IN THE CASE OF A FIRST OFFENSE. A MANUFACTURER OR A PERSON WHO VIOLATES THIS PART 13 REPEATEDLY IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH REPEAT OFFENSE. PENALTIES COLLECTED UNDER THIS PART 13 MUST BE DEPOSITED IN THE LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND CREATED IN SECTION 24-33.5-1231.

25-5-1308. Survey. (1) ONCE EVERY THREE YEARS, THE DEPARTMENT SHALL CONDUCT A SURVEY OF FIRE DEPARTMENTS TO DETERMINE, AS APPLICABLE:

(a) EACH FIRE DEPARTMENT'S NAME, FIRE DEPARTMENT IDENTIFICATION NUMBER, AND ADDRESS;

(b) THE AMOUNT, TYPE, AND DATE OF MANUFACTURE OF ANY CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS WHICH EACH FIRE DEPARTMENT POSSESSES;

(c) HOW, WHERE, AND WHEN THE FIRE DEPARTMENT HAS USED CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS FOR FIREFIGHTER TRAINING;

(d) WHETHER THE FIRE DEPARTMENT'S STATIONS ARE SERVED BY A WELL OR PUBLIC DRINKING WATER SOURCE;

(e) WHETHER THE FIRE DEPARTMENT HAS USED CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS IN THE LAST FIVE YEARS, WHETHER THAT USE WAS REPORTED TO THE DEPARTMENT, AND IF NOT WHEN AND WHERE THE CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS WAS USED; AND

(f) HOW MUCH, IF ANY, CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS THE FIRE DEPARTMENT HAS DISPOSED OF.

(2) ON OR BEFORE JANUARY 1, 2020, THE DEPARTMENT SHALL COMPILE THE RESULTS OF THE SURVEY CONDUCTED UNDER SUBSECTION (1) OF THIS SECTION AND PRESENT THE RESULTS TO THE HEALTH AND INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ITS SUCCESSOR COMMITTEE, AND THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR ITS SUCCESSOR COMMITTEE.

SECTION 4. Appropriation. (1) For the 2019-20 state fiscal year, \$55,278 is appropriated to the department of public health and environment for use by the water quality control division. This appropriation is from the general fund. To implement this act, the division may use this appropriation as follows:

(a) \$49,910 for personal services, which amount is based on an assumption that the division will require an additional 0.7 FTE; and

(b) \$5,368 for operating expenses.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final

adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 3, 2019